

WETLANDS COUNCIL

MINUTES

June 14, 2016

The Wetlands Council met on Tuesday, June 14, 2016 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Sheridan Brown, Carol Henderson, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, Susan Slack, Robert Snelling and Bob Wolff

Absentees: Councilors: Ryan Crosbie and James Kennedy

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:02 a.m. with introductions and a quorum present. Our new member, Sheridan Brown representing Elected Municipal Officials, was introduced and he gave a background of his experiences. Summer law interns who were present were also recognized.

1. Approval of Minutes

- *Councilor Lievens made a motion to accept the April 12, 2016 minutes as written, second by Councilor Wolff. Motion passed unanimously. With Councilors Prescott and Snelling abstaining.*

2. Public Input: None

3. Status Report

I. New Appeals

Docket No. 16-05 WtC – Alan and George Armstrong Appeal

Subject: 2/17/16 Clarification of permit #2012-02636 from Assistant Attorney General Chris Aslin.

Hearing Officer: Not assigned

Status: March 13, 2016 received Request for Appeal. 3/23/16 issued Receipt of Appeal letter. April 5, 2016 received State's Motion to Summarily Dismiss. May 3, 2016 Response to State's Motion to Dismiss. Council to accept or dismiss appeal today.

- *Councilor St. Pierre made a motion to grant the Motion to Dismiss and not accept the Appeal, second by Councilor Slack. Motion passed unanimously.*

II. Decisions that need to be written/finalized and issued.

Docket No. 14-16 WtC – David and Louise Drolet, et al. Appeal

Subject: 11/10/14 permit approval #2014-00246 issued to Green and Company

Hearing Officer: David Conley, Esq. appointed by AG on 3/13/15

Status: 12/10/14 received Notice of Appeal. 12/11/14 issued insufficient appeal letter. 12/24/14 received Amended Notice of Appeal. 12/30/14 issued receipt of appeal letter. Council accepted the appeal at the February 10, 2015 meeting. 2/11/15 issued Appeal accepted letter. 2/20/15 received Appearance from Ari Pollack for permittee. April 17, 2015 issued Notice of scheduled PHC for 4/24/15 at 9 a.m. 4/17/15 received Appearance for Collis Adams. 4/22/15 received Assented-To Motion to Continue. 4/23/15 issued letter granting Motion and rescheduling PHC for 5/13/15 at 11:30 a.m. May 13, 2015 issued Pre-hearing Order scheduling hearing for September 8, 2015 at 9 a.m. 5/15/15 issued Ruling on Validity of Permit Condition. August 6, 2015 received Permit Holder's Witness and exhibit List. 8/13/16 received Assented-To Motion to Continue Final Hearing and Continue Hearing and rescheduling hearing for November 10, 2015 at 9 a.m. 8/20/15 received Partial Objection to Permit Holder's Motion in Limine. 9/25/15 issued Order on Permit Holder's Motion in Limine.

October 19, 2015 received Motion to Continue. 10/21/15 received Objection to Appellant's Motion to Continue Hearing. 10/26/15 issued letter granting Motion to Continue and rescheduling hearing for February 9, 2016 at 9 a.m. November 24, 2015 received Appellant's Witness and Exhibit List. Hearing was held February 9, 2016 and deliberations were held on 2/16/16. Hearing Officer to issue decision within 90 days(5/16/16). Councilor Henderson noted that on top of page 3 of the Decision it should be 'disturbance' of an area not 'wetlands'.

- ***Councilor Snelling made a motion to adopt the Decision with one correction, second by Councilor Prescott. Motion passed unanimously by those in attendance at the Hearing. Councilor Brown abstained.***

Docket No. 15-10 WtC – Christopher John Krochina Appeal

Subject: 5/11/15 approval of permit #2015-00158 issued to Barbara Ann and Ronald Coburn

Hearing Officer: David Conley, Esq. appointed by AG on 9/14/15

Actions: June 10, 2015 received Petition for Appeal. 6/11/15 issued insufficient appeal letter. July 10, 2015 received Amendment to Petition for Appeal. 7/13/15 issued receipt of Amendment to Petition for Appeal. Not sure of timeliness, depends on what date the Council decides is the date of issuance. Date of Decision(May 9, 2015) or cover letter (May 11, 2015). Council accepted appeal at their September 8, 2015 meeting. 9/10/15 issued appeal accepted letter. 9/25/15 issued Notice of PHC scheduled for 10/19/15 at 10:30 a.m. October 13, 2015 received Appearance of Darlene Forst. 10/15/15 received Appearance of Nicol Roseberry for the permittee. 10/15/15 issued Notice of Rescheduled PHC to November 2, 2015 at 9 a.m. 10/15/15 received Corrected Appearance of Nicol Roseberry. 10/15/15 received Appearance for Ronald Coburn, permittee. 10/26/15 received Appearance of Atty. Christopher Boldt for the permittees. 10/30/15 received Motion to Continue. November 2, 2015 issued Pre-Hearing Order with Hearing scheduled for April 12, 2016 at 9 a.m. 11/16/15 received Motion to Dismiss. 11/23/15 received Objection to Motion to Dismiss. December 23, 2015 issued letter denying Motion to Dismiss. 12/23/15 issued notice of 2nd Pre-hearing Conference scheduled for February 8, 2016 at 10:30. 12/23/15 issued ruling on Appellant's Objection to Motion to Dismiss. 2/8/16 issued 2nd Pre-hearing Order scheduling a hearing on standing for April 12, 2016 and a hearing on merits for May 10, 2016 if needed. 2/11/16 received Exhibit A of Motion to Dismiss. 2/16/16 received Appellant's Motion to Limine. 2/22/16 received Intervenor's Objection to Appellant's Motion in Limine. 2/29/16 received Appellant's Motion to Strike the Coburn's Motion to Dismiss and Exhibit A. March 2, 2016 received Intervenor's Objection to Appellant's Motion to Strike. 3/22/16 received Intervenor's Witness and Exhibit List. 3/23/16 received Appellant's Witness and Exhibit List and Motion for Summary Judgment as to Appellant's Standing. 3/31/16 received Intervenor's Objection to Appellant's Motion for Summary Judgment and Witness and Exhibit list. 4/4/16 issued Orders on Pre-hearing Motions. 4/5/16 issued letter regarding Order on Intervenor's Objection to Appellant's Witness and Exhibit List. 4/8/16 received Appellant's Witness and Exhibit List. April 12, 2016 held Hearing and Deliberations on Standing. Draft Decision and Order for Council's consideration.

- ***Councilor Lievens made a motion to Adopt as written, second by Councilor Mellor. Motion passed unanimously. Councilors Prescott and Brown abstaining.***

Docket No. 15-17 WtC – Rene Montplaisir and Barbara Fraser Appeal

Subject: 11/10/15 amended Administrative Order No. 11-037 WD

Hearing Officer: Not assigned

Status: 12/31/15 received Notice of Appeal. 1/5/16 issued receipt of Appeal letter. The Appeal appears to be untimely filed. 1/8/16 received Appearance from Atty. Brooks and Motion to Dismiss. 1/8/16 received Objection to Motion to Dismiss. Council to Accept or dismiss at their February 9, 2016 meeting. Council denied the Appeal at the February 9, 2016 meeting. 2/12/16 issued ruling on Acceptance of Appeal and Motion to Dismiss. 3/11/16 received Petition for Rehearing, Motion to Amend Appeal and Waive Rule and Appeal of the Amended Administrative Order dated November 10, 2015. March 18, 2016 received Objection to Motion for Rehearing, Motion to Amend Appeal and Waive Rule, and Motion to Dismiss the Appeal of Amended Administrative Order. 3/28/16 received Objection to Motion to Dismiss. April 12, 2016 Council issued Ruling, denying Petition for Rehearing and dismissing revised Appeal. Docket is now closed.

III. Hearings or PHCs Pending

Docket No. 15-12 WtC – N. Miles Cook III Appeal

Subject: 10/9/15 denial of permit application #2015-00960

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Hearing Officer: David Conley, Esq. appointed by AG on 2/22/16

Status: November 5, 2015 received Petition for Appeal. 11/9/15 issued receipt of Appeal letter. 11/20/15 received Appearance from Atty. Maloney for DES. Council to accept or dismiss at their February 9, 2016 meeting. Appeal was accepted at the February 9, 2016 Council meeting. 2/23/16 issued Appeal accepted letter. 2/25/16 issued notice of Pre-hearing Conference schedule for 3/28/16 at 9:30 a.m. 3/28/16 issued Pre-hearing Order scheduling hearing for June 14, 2016 at 9 a.m. May 13, 2016 received State's Witness and Exhibit List. 5/13/16 received Appellant's Witness and Exhibit List. June 2, 2016 received motion to Continue Hearing. 6/8/16 issued letter granting Motion to Continue Hearing, rescheduling it for August 9, 2016 at 9 a.m.

Docket No. 15-15 WtC – Linda J. Giannetta, Trustee Appeal

Subject: 11/25/15 denial of permit, File #2015-01500

Hearing Officer: David Conley, Esq. appointed by AG on 5/9/16

Status: December 22, 2015 received Notice of Appeal. 12/23/15 issued Insufficient Appeal letter. January 14, 2016 received revised Notice of Appeal. 1/15/16 issued receipt of Appeal letter. April 12, 2016 Council accepted the Appeal. 4/13/16 issued Appeal Accepted letter. May 26, 2016 issued Notice of Pre-hearing Conference scheduled for June 20, 2016 at 9 a.m.

Docket No. 16-04 WtC – Maria Giakoumakis and Paul Foden Appeal

Subject: 02/17/16 Letter from AG regarding Grandfather Status

Hearing Officer: David Conley, Esq. appointed by AG on 5/9/16

Status: March 10, 2016 received Petition for Appeal. 3/18/16 received Motion to Summarily Dispose of Appeal. 3/23/16 issued receipt of Appeal letter. 3/29/16 received Appearance for Atty. Aslin and the State's Motion to Summarily Dismiss. April 12, 2016 the Council voted to accept the Appeal limited to the clarifying letter of February 17, 2016. 4/13/16 issued Ruling on Acceptance of Appeal and Motions to Dismiss. May 26, 2016 issued Notice of Pre-hearing Conference scheduled for June 20, 2016 at 10 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal**Docket No. 14-12 WtC – Susan and Mark Hilbert Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 28, 2014 received Notice of Appeal. 7/30/14 issued insufficient appeal letter. August 8, 2014 received revised Notice of Appeal. 8/11/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/27/14 issued Prehearing Order staying the appeal pending the outcome of the Superior Court Quiet Title action. Letter requesting status to be sent.

Docket No. 14-13 WtC – Ergendino Perrone and Robert Gleason Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued receipt of appeal letter. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/21/14 received Assented-To Motion to Stay Proceedings. 10/22/14 issued letter granting Motion to Stay Proceedings. July 1, 2015 received appellant's Withdrawal of Counsel Philip Braley. 7/6/15 received appellant's withdrawal of counsel Cooley Arroyo. Letter requesting status to be sent.

Docket No. 14-14 WtC – Jeffrey Norton et al. Appeal

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued insufficient appeal letter. August 6, 2014 received revised Notice of Appeal. 8/7/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin

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for the department. 10/22/14 received Assented-To Motion to Stay. 10/23/14 issued letter granting Motion to Stay. Letter requesting status to be sent.

Docket No. 15-13 WtC – John and Toby Heisey Appeal

Subject: 10/23/15 amendment approval of permit #2012-01642

Hearing Officer: David Conley, Esq. appointed by AG on 2/22/16

Status: November 12, 2015 received Petition for Appeal. 11/13/15 received Supplement to Certificate of Service and issued receipt of Appeal letter. 11/19/15 received Appearance from Atty. Pollack for the permittee. 11/23/15 received Appearance from Collis Adams. Council to accept or dismiss Appeal at their February 9, 2016 meeting. Chairman Kimball asked Appeals Clerk, Paula Scott, to first give a timeline of the old appeals. Appeal was accepted at the February 9, 2016 Council meeting. 2/23/16 issued Appeal accepted letter. 2/25/16 issued Notice of Pre-hearing Conference schedule for 3/28/16 at 10:30 a.m. 3/14/16 received Motion for Continuance. 3/15/16 issued letter granting Motion for Continuance and rescheduled PHC for April 11, 2016 at 9:30 a.m. 3/21/16 received Assented to Motion for Continuance. 3/28/16 issued letter granting the Assented to Motion for Continuance and rescheduled PHC for May 9, 2016 at 9 a.m. May 9, 2016 issued Pre-Hearing Order staying Appeal until property rights litigation is resolved.

V. Misc.

4. New Business

Chairman Kimball noted that there was no wetlands legislation this past session.

5. Old Business

6. Next Meetings –

August 9, 2016 at 8:30 a.m. with the Cook hearing at 8:30.

7. Adjournment

- ***Councilor Henderson made a motion to adjourn, second by Councilor Wolff. Motion passed unanimously.***

Meeting adjourned at 9:33 a.m.